

REMARKS

I. Status Summary

Currently, claims 1-6 are pending. Claims 1-6 presently stand rejection. Within this Amendment, claims 1-6 have been amended. Applicant respectfully submits that the Amendments to claims 1-6 do not raise issues of new matter and does not require further consideration or search by the Examiner. Further, Applicant respectfully submits that the Amendment and the remarks below place claims 1-6 in condition for allowance or in better condition for appeal, as discussed in greater detail below. Reconsideration of the application and entry of the Amendment is respectfully requested.

II. Claim Rejections under 35 U.S.C. § 102(b)

Claims 1-6 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,467,793 to Ender (hereinafter, "Ender"). Further, claims 1 and 3-5 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,483,335 to Tornier (hereinafter, "Tornier").

Applicants note that it is well settled that for a cited reference to qualify as prior art under 35 U.S.C. §102, each element of the claimed subject matter must be disclosed within the reference. See Hybritec, Inc. v. Monoclonal Antibodies, Inc., 802 F.2d 1367, 231 U.S.P.Q. 81 (Fed. Cir. 1986) (stating that "[i]t is axiomatic that for prior art to anticipate under 102 it has to meet every element of the claimed invention"). Accordingly, Applicant respectfully submits that neither Ender nor Tornier disclose every element of claims 1-6 and therefore cannot anticipate these claims under 35 U.S.C. §102(b).

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March 14, 2007



"Express Mail" mailing number EV 944 038 605 US
Date of Deposit March 14, 2007
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Re: U.S. Patent Application Serial No. 10/672,370 for
MODIFICATION OF PERCUTANEOUS INTRAFOCAL
PLATE SYSTEM
Our Ref. No. 421/75/2

Sir:

Please find enclosed the following:

1. Request for Continued Examination (RCE) Transmittal and Request for Extension of Time;
2. Copy of Amendment B;
3. Check in the amount of \$620.00; and
4. A return-receipt postcard to be returned to our offices with the U.S. Patent and Trademark date stamp thereon; and
5. A Certificate of Express Mail No.: EV 944 038 605 US.

Please contact our offices if there are any questions with respect to this matter. The Commissioner is hereby authorized to charge any fees associated with the filing of this correspondence to Deposit Account No. 50-0426.

Respectfully submitted,

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